

BEFORE THE  
ILLINOIS COMMERCE COMMISSION

IN THE MATTER OF: )  
 )  
 )  
NORTHERN ILLINOIS GAS COMPANY, )  
d/b/a NICOR GAS COMPANY )  
 )  
 ) No. 04-0779  
 )  
Proposed general increase in )  
natural gas rates (Tariffs filed )  
on November 4, 2004). )

Chicago, Illinois  
May 25, 2005

Met pursuant to notice at 9:00 a.m.

BEFORE :

MR. IAN D. BRODSKY and MR. THOMAS G. ARIDAS,  
Administrative Law Judges.

APPEARANCES:

FOLEY & LARDNER, LLP, by  
MR. E. GLENN RIPPIE and  
MR. JOHN P. RATNASWAMY and  
MR. CHRISTOPHER ZIBART  
321 North Clark Street, Suite 2800  
Chicago, Illinois 60610  
Appearing for Northern Illinois Gas;

MR. DAVID I. FEIN  
550 West Washington Boulevard, Suite 300  
Chicago, Illinois 60661  
Appearing for Constellation NewEnergy

1 APPEARANCES: (Cont'd)

2 MS. LEIJUANA DOSS  
3 ASSISTANT STATE'S ATTORNEY  
4 69 West Washington Street, Suite 3130  
5 Chicago, Illinois 60602  
6 Appearing for the People of Cook County,  
7 Illinois;

8 MR. JOHN C. FEELEY,  
9 MR. JOHN J. REICHART,  
10 MR. CARMEN L. FOSCO and  
11 MS. CARLA SCARSELLA  
12 160 North LaSalle Street, Suite C-800  
13 Chicago, Illinois 60601  
14 Appearing for Staff;

15 MS. FAITH E. BUGEL  
16 35 East Wacker Drive, Suite 1300  
17 Chicago, Illinois 60601  
18 Appearing for Environmental Law & Policy  
19 Center of the Midwest;

20 MR. MARK G. KAMINSKI and  
21 MR. RISHI GARG  
22 100 West Randolph Street, 11th Floor  
Chicago, Illinois 60601  
Appearing for the People of the  
State of Illinois;

MR. ROBERT J. KELTER  
208 South LaSalle Street, Suite 1760  
Chicago, Illinois 60604  
Appearing for CUB;

1 APPEARANCES: (Cont'd)

2 DLA PIPER RUDNICK GRAY CARY US, LLP, by  
3 MR. CHRISTOPHER J. TOWNSEND and  
4 MR. WILLIAM A. BORDERS  
203 North LaSalle Street, Suite 1500  
Chicago, Illinois 60601  
Appearing for MidAmerican Energy Company,  
5 Direct Energy Services, LLC, Interstate Gas  
Supply of Illinois, Inc., U.S. Energy Savings  
6 Corporation and WPS Energy Services, Inc.,  
collectively as Retail Gas Suppliers;

7  
8 ROWLAND & MOORE, LLP, by  
9 MR. STEPHEN J. MOORE  
200 West Superior Street, Suite 400  
Chicago, Illinois 60610  
10 Appearing for Dominion Retail, Inc., and  
Business Energy Alliance and Resources;

11  
12 LUEDERS ROBERTSON & KONZEN, LLC, by  
13 MR. R. ERIC ROBERTSON and  
MR. RYAN ROBERTSON  
P.O. Box 735  
14 1939 Delmar Avenue  
Granite City, Illinois 62040  
15 Appearing for IIEC;

16  
17 MS. RONIT BARRETT  
224 South Michigan Avenue, Suite 1100  
Chicago, Illinois 60603  
18 Appearing for Vanguard Energy Services, LLC.

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22 SULLIVAN REPORTING COMPANY, by  
Kerry L. Knapp, CSR

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I N D E X

<u>Witnesses:</u>	<u>Direct</u>	<u>Cross</u>	<u>Re-Direct</u>	<u>Re-Cross</u>
David J. Effron	1122	1126 1167	1167	1169
John M. Oroni	1171	1174	1193	
James L. Crist	1196	1198	1203	
Neil Anderson	1205	1209		
Christopher Thomas	1218	1222 1227		

IN CAMERA SESSION: Pages 1187-1192

1	<u>E X H I B I T S</u>		
2			
3	<u>Number</u>	<u>For Identification</u>	<u>In Evidence</u>
4	AG No. 1.0		1126
5	AG No. 1.3	1122	1126
6	CNE No. 1.0		1174
7	CNE No. 2.0		1174
8	NICOR No. 56	1180	
9	STAFF No. 6		1194
10	STAFF No. 15		1194
11	STAFF No. 24		1194
12	BEAR No. 1		1195
13	BEAR No. 2	1195	1195
14	JLC No. 1		1198
15	JLC No. 2		1198
16	VANGUARD No. 1		1209
17	VANGUARD No. 2	1204	1209
18	CUB CCSAO No. 1.0		1222
19	CUB CCSAO No. 3.0		1222
20	CUB CCSAO No. 1.9		1222
21	CUB CCSAO No. 1.10		1222
22			

1 JUDGE BRODSKY: Pursuant to the direction of the  
2 Illinois Commerce Commission, I now call Docket  
3 No. 04-0779. This is the general increase in gas  
4 rates from Nicor.

5 May I have the appearances for the record,  
6 please, starting with the company.

7 MR. RIPPIE: On behalf of Northern Illinois Gas  
8 Company, Glenn, two Ns, Rippie, R-i-p-p-i-e, and John  
9 Ratnaswamy, R-a-t-n-a-s-w-a-m-y, both of the law firm  
10 of Foley & Lardner, LLP, 321 North Clark Street,  
11 Suite 2800, Chicago, Illinois 60610.

12 JUDGE BRODSKY: Staff?

13 MR. REICHART: Appearing on behalf of the Staff  
14 of the Illinois Commerce Commission, John Reichart,  
15 Carla Scarsella, John Feeley, and Carmen Fosco. Our  
16 address is 160 North LaSalle, Chicago,  
17 Illinois 60601.

18 MR. KAMINSKI: Mark Kaminski and Rashi Garg of  
19 the Illinois Attorney General's Office, 100 West  
20 Randolph Street, Chicago, Illinois 60601, on behalf  
21 of the People of the State of Illinois.

22 MR. KELTER: On behalf of the Citizens Utility

1 Board, Robert Kelter, 208 South LaSalle, Suite 1760,  
2 Chicago 60604.

3 MS. BUGEL: On behalf of the Environmental Law &  
4 Policy Center, Faith Bugel, B-u-g-e-l, 35 East Wacker  
5 Drive, Chicago, Illinois 60601.

6 MR. FEIN: On behalf of the Constellation New  
7 Energy Gas Division, LLC, David I. Fein, 550 West  
8 Washington Boulevard, Suite 300, Chicago 60661.

9 MR. MOORE: On behalf of the Dominion Retail,  
10 Inc., and Business Energy Alliance and Resources,  
11 LLC, Stephen Moore of the law firm of Rowland &  
12 Moore, 200 West Superior Street, Suite 400, Chicago,  
13 Illinois 60610.

14 MR. BORDERS: William A. Borders and Christopher  
15 Townsend, DLA Piper Rudnick Gray Cary, 203 North  
16 LaSalle, Suite 1900, Chicago, Illinois 60601, on  
17 behalf of MidAmerican Energy Company, Direct Energy  
18 Services, LLC, Interstate Gas Supply of Illinois,  
19 U.S. Energy Savings Corporation, and WPS Energy  
20 Services, Inc.

21 MR. RYAN ROBERTSON: Eric Robertson and Ryan  
22 Robertson, Lueders, Robertson & Konzen, on behalf of

1 IIEC, 1939 Delmar Avenue, Granite City,  
2 Illinois 62040.

3 JUDGE BRODSKY: Any other appearances today? All  
4 right. Let the record reflect there are no further  
5 appearances.

6 Is the AG ready to proceed?

7 MR. KAMINSKI: Yes, your Honor.

8 (Whereupon, AG  
9 Exhibit No. 1.3 was  
10 marked for identification  
11 as of this date.)  
12 (Witness sworn.)

13 JUDGE BRODSKY: Thank you.

14 DAVID J. EFFRON,  
15 called as a witness herein, having been first duly  
16 sworn, was examined and testified as follows:

17 DIRECT EXAMINATION

18 BY

19 MR. KAMINSKI:

20 Q. Good morning, Mr. Effron, could you please  
21 identify yourself, spelling your last name for the  
22 record.



1           A.    My name is David J. Effron, E-f-f-r-o-n.

2           Q.    Mr. Effron, do you have before you the

3           rebuttal testimony of David J. Effron on behalf of

4           the People of the State of Illinois marked as AG

5           Exhibit 1.3?

6           A.    Yes, I do.

7           Q.    And this consists of 23 pages of typewritten

8           questions and answers?

9           A.    Yes, that's correct.

10          Q.    And 17 pages of attached exhibits?

11          A.    Yes.

12          Q.    Did you prepare this testimony?

13          A.    Yes, I did.

14          Q.    If asked the questions therein now, would

15          your questions be those -- would your answers be

16          those provided in the written testimony?

17          A.    Yes.

18          Q.    Mr. Effron, do you have before you the

19          direct testimony of David J. Effron on behalf of the

20          People of the State of Illinois marked as AG

21          Exhibit 1.0?

22          A.    Yes, I do.

1           Q.   And this consists of 29 pages of typewritten  
2 questions and answers?

3           A.   Yes.

4           Q.   And 14 pages of attached exhibits?

5           A.   Yes.

6           Q.   And did you prepare this testimony?

7           A.   Yes, I did.

8           Q.   And with the exception of those changes  
9 reflected in your rebuttal testimony, if asked the  
10 questions therein now, your answers would be those  
11 provided in this written testimony?

12          A.   Yes, they would.

13          Q.   Referring back to your rebuttal testimony,  
14 Exhibit 1.3, there was a change offered, I believe,  
15 on May 11th; correct?

16          A.   Yes.

17          Q.   Could you describe that change.

18          A.   Yes. That change, very simply, on Page 13  
19 of the rebuttal testimony, AG Exhibit 1.3, on  
20 Line 14, changed what should have been the word  
21 "would," w-o-u-l-d, to should, s-h-o-u-l-d.

22          Q.   And there are no other changes to that

1 document?

2 A. There are no other changes.

3 MR. KAMINSKI: Thank you.

4 Your Honor, at this time, we offer both AG  
5 Exhibit 1.0 and AG Exhibit 1.3, subject to cross.

6 JUDGE BRODSKY: Is there any objection?

7 MR. RATNASWAMY: It's not an objection, but is  
8 there still a confidential version versus a public  
9 version of one or both of these?

10 MR. KAMINSKI: My understanding is there is a  
11 public and confidential version of each. So I -- I'm  
12 amending that and I would offer both the public and  
13 confidential versions of this document. They are  
14 both the errata version of the 1.3 and the original  
15 of 1.0 having confidential and -- proprietary and a  
16 public version that have been filed on E-docket.

17 JUDGE BRODSKY: Okay. That will be in here.  
18 Then we've got, if I remember correctly, Exhibit 1.0  
19 and various attachments to it.

20 MR. KAMINSKI: Yes.

21 JUDGE BRODSKY: Those are in Exhibit 1.0?

22 MR. RIPPIE: Yes, they are attachments to the

1 1.0.

2 JUDGE BRODSKY: Hearing no objections, AG 1.0 and  
3 1.3 are admitted subject to cross.

4 MR. KAMINSKI: Thank you.

5 (Whereupon, AG  
6 Exhibit Nos. 1.0 and 1.3 were  
7 admitted into evidence  
8 as of this date.)

9 CROSS EXAMINATION

10 BY

11 MR. RATNASWAMY:

12 Q. Mr. Effron, would you please direct your  
13 attention to your rebuttal, Page 1, Line 19, through  
14 Page 4, Line 7, please.

15 A. Yes, I have that.

16 Q. Okay. Without trying to get into all the  
17 details at the moment, would it be fair to say that  
18 in that section of your testimony, you compare Nicor  
19 Gas' proposed rate base as presented in its rebuttal  
20 testimony, your proposal in rebuttal, and the rate  
21 base that was approved in Nicor Gas' last rate case?

22 A. What I'm doing here is responding to the

1       company's rebuttal testimony, comparing the rate  
2       bases being proposed by the various parties in this  
3       case to what the Commission approved in the 95-0219  
4       docket.

5               And as part of that rebuttal testimony, I do  
6       address the AG's proposed rate base in this case to  
7       the rate base approved by the Commission in the  
8       company's last rate base case.

9               Q.    Thank you.   And on Page 2, Line 11, do you  
10      see a reference to a Schedule B5?

11              A.    Yes.

12              Q.    Okay.   I'd like to ask you to turn then to  
13      Schedule B5.

14              A.    Yes, I have that.

15              Q.    In addition -- I don't know if you have  
16      these bound or not, but are you able to pull out a  
17      copy of your Schedule B?   You can look at both.

18              A.    Yes, I have my Schedule B.

19              Q.    Okay.   Would you agree that on Schedule B5,  
20      Column 3, AG's proposed -- sorry.   Hold on one  
21      moment, please.   Actually, let me ask you this.

22                     On Schedule B5, Column 3, do you see -- is

1       that the AG's proposed position in this case?

2           A.    Yes.

3           Q.    Okay.  On Schedule B, the columns aren't

4       numbered, but the third column of numbers, do you see

5       that?

6           A.    The column on Schedule B, which column?

7           Q.    The last one on the right.

8           A.    Yes.

9           Q.    Is that also the AG's proposed position?

10          A.    Yes.

11          Q.    Why don't they match?

12          A.    They do.

13          Q.    Okay.  I may be looking at the wrong

14       version.  That's why I'm puzzled.  Which is the

15       correct plant in service number, gross plant in

16       service?

17          A.    As I explained in the testimony, I

18       reclassified certain of the accounts on my

19       Schedule B5 to comport with the Commission's

20       presentation in docket -- in the 1996 case, but

21       you'll see that the bottom line is the same.

22          Q.    Okay.

1           A.    So some of the lines might not match exactly  
2           because I reclassified the construction work in  
3           progress to comport with the Commission's  
4           presentation in the company's last rate base case.  
5           But the bottom line matches.

6           Q.    Okay.  I see.  Thank you.  On Schedule B1 --  
7           sorry, B footnote 4 under Sources, do you see that?

8           A.    Yes, I do.

9           Q.    Okay.  And there's three lines of note 4.  
10          And the second of those lines, do you see it refers  
11          to testimony of Mr. Mierzwa and it's followed by a  
12          number?

13          A.    Yes.

14          Q.    Okay.  What is that number?

15          A.    173396, 173,396.

16          Q.    Okay.  In your direct testimony, could I  
17          direct -- could you look at your direct testimony at  
18          Page 9, Line 8, please.

19          A.    Yes.

20          Q.    Okay.  Do you see there, Lines 7 to 8, a  
21          reference to the accumulation of Mr. Mierzwa's three  
22          adjustments to gas and storage?

1           A.    I'm referring now to my Page 9, Line 8 of my  
2 direct testimony?

3           Q.    Yes.

4           A.    Yes, I see the reference to Mr. Mierzwa's  
5 proposed adjustment.

6           Q.    Okay. So at the time of your direct  
7 testimony, the amount of Mr. Mierzwa's adjustment to  
8 gas and storage, as you understood it, was  
9 164,770,000.

10          A.    Yes. It was the adjustment necessary to  
11 bring the gas and storage to the negative 66,053,000.

12          Q.    Okay. Going back to your Schedule B where  
13 in note four you're referring to testimony of  
14 Mr. Mierzwa, and you have the amount of his  
15 adjustment as 173,396,000, does that appear anywhere  
16 in his narrative of Mr. Mierzwa's testimony?

17          A.    I don't recall as I sit here. It was the  
18 adjustment, again, necessary to bring the end result  
19 to the \$66,053,000 negative in the far right-hand  
20 column. Since the company's starting position  
21 changed from the original to rebuttal testimony, the  
22 necessary adjustment to achieve the same end result



1 changed.

2 Q. Okay. If you could go -- all right. So in  
3 including both Mr. Mierzwa's testimony and the  
4 schedules thereto, would you agree, just looking at  
5 that, you cannot come up with this 173,396,000  
6 number?

7 A. I'll accept that. Again, I think the  
8 number, as I recall, was -- that he was proposing was  
9 the negative 66 million. So it was whatever  
10 adjustment that was necessary to achieve that amount.  
11 So in that regard, the 173 million might not be in  
12 his testimony.

13 Q. Okay. If you go up one line, you refer  
14 to -- this is in Schedule B again -- effective rate  
15 design change and you cite Nicor Schedule B-2.2. Do  
16 you see that?

17 A. Yes.

18 Q. Do you see an amount there of 17,977,000?

19 A. Yes.

20 Q. Okay. Is that the number that Nicor Gas  
21 proposed in rebuttal?

22 A. The number in rebuttal might have changed

1       some. I don't think it changed very much, if it did.

2           Q.    Okay. Is \$8 million very much?

3           MR. KAMINSKI: Do you have the citation that  
4       you're referring to in the Nicor rebuttal?

5           MR. RATNASWAMY: If you could look at  
6       Mr. Gorenz' rebuttal, 26B, his attachment 26B.1,  
7       Schedules B1 and B2 -- I think I've got those.

8                       (Discussion off the record.)

9           MR. RATNASWAMY: Here is one.

10          THE WITNESS: Actually, I do have that.

11       BY MR. RATNASWAMY:

12          Q.    Okay.

13          A.    My understanding was the 8.6 million, that  
14       was an adjustment to the company's original position  
15       for the total gas and storage, not the adjustment to  
16       their original adjustment, if you understand what I'm  
17       saying.

18                The 8.6 million isn't an adjustment to the  
19       17.9 million. It's an adjustment to the total gas  
20       and storage, which is different because -- some of  
21       that might pertain to the 7.8 million; but, again, my  
22       recollection is that that was a fairly minor part of

1       it.

2           Q.    Okay.  Thank you.  Now, would you agree that  
3       with regard to the gas and storage adjustments of  
4       Mr. Mierzwa that you incorporate into your  
5       calculation, that your testimony is not intended to  
6       provide any independent support for those  
7       adjustments?

8           A.    That's correct.

9           Q.    All right.  Would you turn to your rebuttal  
10      Schedule D, please, D as in dog.

11          A.    I have Schedule D.

12          Q.    Okay.  The words -- well, would you agree  
13      that this is essentially broken into two parts, one  
14      labeled company position and one labeled AG position?

15          A.    Yes.

16          Q.    Okay.  When you refer to AG position, are  
17      you relying entirely on the testimony of CUB and  
18      Cook County State Attorney's Office witness  
19      Mr. Thomas?

20          A.    Yes.

21          Q.    Okay.  Is Mr. Thomas testifying on behalf of  
22      the Attorney General's Office?

1           MR. KAMINSKI: I'm sorry. Could you repeat that  
2 question.

3 BY MR. RATNASWAMY:

4           Q. Is Mr. Thomas testifying on behalf of the  
5 Attorney General's Office?

6           A. You'd have to ask the Attorney General that.

7           Q. Well, so when you say AG position here, what  
8 do you mean?

9           A. Well, the attorneys asked that I  
10 incorporated the recommendation of Mr. Thomas into my  
11 calculation of the company's revenue deficiency or  
12 revenue excess.

13          Q. Okay. And would it be fair to say, just as  
14 with Mr. Mierzwa's adjustments, that your testimony  
15 is not intended to provide any independent support  
16 for that of Mr. Thomas?

17          A. It would be fair to say that, yes.

18          Q. Could you please turn to your -- still  
19 sticking with rebuttal -- Schedule A. If you could  
20 look at the final column labeled, Proposed Position.  
21 Is that the Attorney General's Office's proposed  
22 position?

1           A.    I believe it is, yes.  It's the revenue  
2           excess that I calculated.  I believe that's the  
3           Attorney General's position.

4           Q.    Well, would you be more comfortable if I  
5           referred to it as your proposed position?

6           A.    It isn't my proposed position because I've  
7           incorporated recommendations that I'm not sponsoring.  
8           It's the number that I calculated.

9                    I guess you could refer to it that way, but  
10           you'd have to understand that it relies on positions  
11           of other witnesses that I'm not offering any -- an  
12           independent support for.

13           Q.    Okay.  With regard to the first line of the  
14           final column, the rate base figure of 4,021,505,000,  
15           besides relying on Mr. Mierzwa's three proposed  
16           adjustments to gas and storage, does that figure rely  
17           on the testimony of any other witness besides  
18           yourself?

19           A.    I accepted an adjustment to the construction  
20           work in progress, not subject -- I'm sorry,  
21           construction work in progress subject to AFUDC in the  
22           testimony of -- I forget whether it's

1 Mr. O'Connor or Mr. Gorenz, but I accepted that. But  
2 with that addition, the other adjustments are mine.

3 Q. Okay. Did you review all of Mr. Mierzwa's  
4 testimony?

5 A. I'm sorry?

6 Q. Did you review all of Mr. Mierzwa's  
7 testimony in this docket?

8 A. I looked at it. I don't know whether you'd  
9 characterize it as a review. I read it over, not in  
10 any depth, though.

11 Q. Okay. Do you recall whether he had one  
12 other proposed adjustment to rate base?

13 A. It's my understanding that he did.

14 Q. To what extent, if any, is his proposed  
15 adjustment relating to the subject of the  
16 uncollectibles reserve incorporated in your  
17 calculations?

18 A. It isn't.

19 Q. Okay. As to Line 2 of Schedule A rate of  
20 return, again, that is the figure proposed by  
21 Mr. Thomas; correct?

22 A. His proposed position, correct, yes.

1           Q.    So is it fair to say that for both elements  
2           of the calculation of the operating income  
3           requirement, you are relying at least in part on the  
4           testimony of another witness whose testimony you,  
5           yourself, do not support?

6           A.    Yes.

7           Q.    Do you -- with regard to the company's  
8           adjustment to gas and storage that you referred to a  
9           few minutes ago, do you recall that being associated  
10          with a proposed rate design change?

11          A.    Yes.

12          Q.    As you sit here right now, do you recall  
13          which rate design change that is?

14          A.    I believe it related to a rate design change  
15          for the transportation customers -- and I'm  
16          paraphrasing now, putting this in my own terms --  
17          where some of the gas and storage that had been the  
18          responsibility of those transportation customers  
19          would revert to Nicor.

20          Q.    And is it fair to say that in your rebuttal  
21          on that subject, you're indicating that your  
22          testimony takes no position on whether that

1 adjustment has been correctly calculated by the  
2 company?

3 A. That's correct, yes.

4 Q. If we can go back to Schedule B, please, of  
5 your rebuttal.

6 A. Yes, I have that.

7 Q. In the company position column, in the row  
8 entitled Cumulated Deferred Income Taxes, would you  
9 agree that the company figure for ADIT incorporates  
10 its forecasted resolution of the Section 263A issue  
11 of \$66,563,000?

12 A. Yes, it does.

13 Q. Okay. Do you have an understanding of --  
14 I'm sorry. Let me back up.

15 Are you familiar with Section 263A of the  
16 Internal Revenue Code?

17 A. I'm generally familiar with it. I haven't  
18 committed it to memory.

19 Q. I'm not seeking to elicit a legal opinion.  
20 I'm only trying to find out if you have an  
21 understanding as a nonlawyer. Is the gist of the  
22 263A issue about when taxes will be paid?



1           A.   That's the gist of the issue in this case,  
2   yes, yes.   The company seems to think it will be paid  
3   September 30th, 2005.   And I consider that forecast  
4   to be speculative.

5           Q.   Okay.   I actually meant to step back one  
6   step.

7                   The election itself under 263A, do you have  
8   any understanding of whether the gist of the election  
9   is to determine whether certain taxes will be paid at  
10  one time or another time?

11          A.   Ultimately, that's the effect of it.   But by  
12  deducting those expenditures currently, it  
13  accelerates the tax deduction to the time that the  
14  expenditures are actually made as compared to  
15  capitalizing the expenditures, treating it as part of  
16  the depreciable plant for tax purposes, and recording  
17  a larger tax depreciation over time.

18                   So, ultimately, yeah, it's a question of  
19  when the taxes are paid, yes.

20          Q.   Okay.   Would -- do you recall when the  
21  company made the 263A election?

22          A.   I believe it was 2002.

1 Q. Okay.

2 A. Might have been 2001, but I think it was  
3 2002.

4 Q. Okay. Would you agree that at the time of  
5 the election -- I'm sorry. I hope you wouldn't agree  
6 with this. It would be wrong.

7 Would you agree that the effect of the  
8 election, as of the end of 2004, December 31st, 2004,  
9 was to increase ADIT of the company by \$133,032,557?

10 A. That's what the company has calculated, yes.

11 Q. Do you differ with that calculation?

12 A. I have no reason to.

13 Q. Do you have any understanding about whether  
14 the election was, in fact, an election in a sense so  
15 the company could make a choice of what to do?

16 A. Well, they did it and they hadn't been doing  
17 it before. So in that regard, it's an election.

18 Q. Okay.

19 A. When I say they did it, I mean they decided  
20 to deduct those expenditures currently. In addition,  
21 there was a fairly large catch-up provision for what  
22 was capitalized previously and what was deducted for

1       taxes in that year.

2           Q.    Would you agree that the company's proposed  
3       resolution -- estimated resolution, if you want to  
4       call it that, is within a few thousand dollars of  
5       being exactly half of the \$133 million figure that  
6       you referred to earlier?

7           A.    It's approximately half of the total, yes.

8           Q.    Okay.  So would you agree as to your  
9       Schedule B, Column 1 on the accumulated deferred  
10      income taxes line, that if you back out of that  
11      figure there both the company's estimated resolution  
12      of the issue and you were to assume the company never  
13      made the election in the first place, that the ADIT  
14      figure would be roughly \$67 million lower?

15          A.    I haven't actually done that calculation.  
16      I'd have to think about that for a minute because if  
17      the election to make those deductions hadn't been  
18      made in 2002, then the amount capitalized and  
19      appreciated would have been greater in the  
20      intervening years and that might provide some offset  
21      to the number that you just mentioned.  But it would  
22      probably be somewhere in that rough neighborhood,

1       though.

2           Q.   Did you review the company's confidential  
3       response to AG Data Request 1.20 and its corrected  
4       response, which I believe have been admitted into  
5       evidence as AG Exhibit 13?

6           A.   Yes, I did.

7           Q.   Would you agree that that response is  
8       consistent with the calculation that I just suggested  
9       to you, again, as a response and a corrected  
10      response?

11          A.   It seems to be, yes.

12          Q.   Okay.  Would you agree that each dollar  
13      decrease -- I'm sorry.

14               Is ADIT a subtraction from rate base?

15          A.   It's a deduction to rate base, yes.  It's a  
16      deduction from the plant in service included in rate  
17      base.  So the larger the ADIT, the smaller the rate  
18      base.  That's generally the way it --

19          Q.   Essentially dollar for dollar?

20          A.   Yes.

21          Q.   And the direction of it, thus, is if ADIT  
22      goes up, rate base goes down?

1           A.    As a general matter, yes.

2           Q.    So if you would turn back to your  
3   Schedule B5, please.

4           A.    Yes.

5           Q.    Would you agree that, all else being equal,  
6   if we reverse out of the company proposed position  
7   its estimated resolution of the 263A issue, and we  
8   reversed out the election itself, that the company's  
9   proposed net rate base in Schedule B5 would be  
10   approximately \$66 and a half million higher?

11          A.    Sure.

12          Q.    If you could turn back to your narrative  
13   rebuttal testimony, Page 4, please.

14                By the way, do you have a copy of  
15   Mr. O'Connor's testimony that you referred to there?

16          A.    I do not have that in front of me.

17          Q.    Do you recall the calculation -- I don't  
18   mean the specific numbers, but do you recall the  
19   calculation that Mr. O'Connor made to which you were  
20   responding? I'm sorry. To be fair, there's actually  
21   two different calculations referenced there.

22          A.    Yeah. Are you referring to Lines 14 through

1       20 there?

2           Q.    Yes.

3           A.    I generally recall it, yes.

4           Q.    Is it fair to say that, although you do not  
5 agree with the implications of the calculations, you  
6 do not disagree with Mr. O'Connor's calculations  
7 themselves?

8           A.    I do not see anything wrong with his  
9 arithmetic.

10          Q.    If you could turn to Page 6 of your  
11 rebuttal, Lines 4 through 10.

12          A.    Yes.

13          Q.    Would you agree that when Nicor Gas prepared  
14 the plant forecast that it presented in its case,  
15 that it started with 2003-year-end plant and then  
16 developed a forecast through the end of 2005?

17          A.    That is generally correct, yes.

18          Q.    When you say generally correct, do you have  
19 any exception in mind?

20          A.    None that come to mind as I sit here.

21          Q.    Would you agree that the effect of your  
22 proposed adjustment to gross utility plant is to

1       reduce the forecasted figure that Nicor Gas presented  
2       till the end of 2005 based on the variance between  
3       its forecast and its actual figure as of the end of  
4       2004?

5           A.    That's all part of it. I began with the  
6       balance as of December 31st, 2004. And then I  
7       calculated the balance as of December 31st, 2005,  
8       based on the three-year average of the additions to  
9       it at the time from plant. That's what I did.

10          Q.    Right. I was trying to distinguish between  
11       the two adjustments. I'm sorry for any confusion.

12                One of your adjustments is based on a  
13       three-year average of net additions -- one of your  
14       plant adjustments, and the other is based on variance  
15       at the end of 2004; is that right?

16          A.    I guess you could characterize it that way.  
17       There's one adjustment to plant that has two elements  
18       to it.

19          Q.    Okay. Does your testimony, either direct or  
20       rebuttal, present any analysis of the cause or causes  
21       of the variance that occurred at the end of 2004?

22          A.    No.

1           Q.    If you could turn to the next page of your  
2    rebuttal, please.  And, in particular, I believe it  
3    is Lines 8 through 10.  And I'd like to ask you --  
4    not the one about net additions, but gross additions.

5                   With regard to gross additions to plant,  
6    would you agree that in each year from 2000 to 2004,  
7    the gross amount of capital additions increased?

8           A.    There were slight increases, yes, much less  
9    than the company was forecasting as increases in  
10   2004, 2005.  But there were increases, yes.

11          Q.    Would you agree that from 2000 to 2004, the  
12   company's gross plant increased every year?

13          A.    I'm sorry.  If I could have that question  
14   again.

15          Q.    Would you agree that each year from 2000 to  
16   2004, the company's gross plant increased?

17          A.    I would be shocked if it didn't.  There will  
18   be some additions to the plant every year.

19          Q.    Okay.  Would you agree that from 2000 to  
20   2004, the company's net plant increased every year?

21          A.    I wouldn't be surprised if that's correct as  
22   well.  And I don't recall, I haven't gone back and



1       checked the earlier years, but I wouldn't be  
2       surprised if there was an increase.

3           Q.    If I could direct your attention to the  
4       sentence that appears on Lines 12 to 13 of that same  
5       page, you state, The company has done little to  
6       explain the reasons for the increase it is  
7       forecasting for 2005.  Is that --

8           A.    Yes.

9           Q.    When you refer there to explanations the  
10      company has or has not offered, is your statement  
11      limited to the testimony the company has presented or  
12      does it also include the company's Part 285 filing?

13          A.    It would include everything.

14          Q.    Okay.  Can we take it from that that you've  
15      reviewed the entire Part 285 filing?

16          A.    I reviewed the parts that I believe were  
17      relevant to the issues I'm addressing in my  
18      testimony.  There were probably matters on things  
19      like rate design, class cost of service, and those  
20      things that I didn't review.

21           JUDGE BRODSKY:  Mr. Effron, speak into the mic,  
22      please.

1 BY MR. RATNASWAMY:

2 Q. Do you recall the company's Schedule F4?

3 A. Not as I sit here right now.

4 Q. Would you agree -- do you know whose  
5 schedule that is?

6 A. I can't cite you schedules by chapter and  
7 verse, no.

8 Q. Okay. Do you recall an attachment to  
9 Mr. D'Allessandro's direct testimony about major  
10 capital additions since the company's last rate case?

11 A. Yes.

12 Q. Would you agree that the company produced  
13 approximately, in its Part 285 filing, 700 pages of  
14 work papers in support of that schedule?

15 A. I can accept that, subject to check.

16 Q. Do you have any other -- any understanding  
17 of whether Part 285, in addition to containing filing  
18 requirements, also requires the utilities to make  
19 documents available at its offices?

20 A. I can't characterize that as I sit here. It  
21 might.

22 Q. Okay. Do you agree that you never asked to

1       see any such documents?

2           A.    I don't recall asking for that.

3           Q.    Okay.  Did you visit the company's offices?

4           A.    No.

5           Q.    Would you agree that the company's Part 285  
6       filing included, among other things, capital budgets  
7       by month from January 2002 through 200- --  
8       December 2005?

9           A.    I don't recall the years exactly, but that  
10       sounds right.

11          Q.    Okay.  And would you agree that for each  
12       month, the capital budgets were broken into  
13       approximately 50 categories of capital investment?

14          A.    Again, I accept that subject to check.

15          Q.    Okay.  And -- well, do you recall reading  
16       the roughly 50-page long single-spaced document  
17       entitled 2005 Budget Process Documentation that was  
18       included in the very same work papers?

19          A.    As I sit here, I can't cite you everything  
20       that I reviewed.  I might have.

21          Q.    When you refer -- I'm sorry.  If you could  
22       turn to the next sentence of your rebuttal where you

1       refer in part to the demonstrated tendency of the  
2       company to overestimate capital additions as  
3       established by Staff, do you see that?

4           A.    Yes, I do.

5           Q.    Are you referring there to Mr. Griffin's  
6       proposed adjustment based on a six-year average of  
7       budget versus actual capital variances?

8           A.    I'm referring to Mr. Griffin's testimony,  
9       yes.

10          Q.    Okay. Are you referring to anything else?

11          A.    Nothing that comes to mind. It would be  
12       Mr. Griffin's testimony.

13          Q.    Okay. Do you agree that he used a six-year  
14       average of 1998 through 2003?

15          A.    Yes.

16          Q.    But you used a three-year average of 2002  
17       through 2004?

18          A.    Well, they were different averages. His  
19       average was a comparison of budgeted to actual  
20       capital spending. And my three-year average was a  
21       three-year average of the actual plant additions.

22          Q.    Would you agree mathematically that if,

1 hypothetically, the Commission were to agree with  
2 both adjustments, it would have to make some  
3 corrections to avoid double counting?

4 A. Yes. You can't just make both adjustments  
5 and put one on top of the other. There will have to  
6 be some reconciliation between the positions to make  
7 sure there wasn't a double counting. I would agree  
8 with that.

9 Q. How closely did you study Mr. Griffin's  
10 testimony?

11 A. I read it. I didn't commit it to memory.

12 Q. Did you read any of his data request  
13 responses on his proposed adjustment?

14 A. I believe I read some of them.

15 Q. Do you recall a data request response in  
16 which he indicated what would be the results of his  
17 methodology if he had chosen periods other than  
18 six years?

19 A. I vaguely remember.

20 MR. RATNASWAMY: This is already in evidence as  
21 Nicor Gas Exhibit 54.

22

1 BY MR. RATNASWAMY:

2 Q. Do you recall seeing this before?

3 A. I might have. I can't say for sure whether  
4 I saw it before or not.

5 Q. Would you agree that if Mr. Griffin had  
6 chosen a three, a two, or the most recent year --  
7 three-year average, two-year average, or the most  
8 recent year -- that his methodology would not have  
9 supported the conclusion that the company  
10 overestimates capital additions?

11 A. That goes a little farther than what it says  
12 here. It just has some numbers. And as one would  
13 expect, if you use different periods, you would come  
14 up with different averages for those different  
15 periods.

16 And if there were a three-year average or  
17 two-year average or using the most recent year, it  
18 says here the numbers would have been positive rather  
19 than negative. It doesn't say anything about  
20 supporting his adjustment or not. It also notes that  
21 if he used a four or five-year average, it would  
22 still be negative.

1           Q.    So is it your testimony that his  
2           adjustment -- proposed adjustment supports the  
3           conclusion that appears on Lines 13 through 16 of  
4           Page 7 of your rebuttal, even though using the same  
5           methodology, a three-year average, a two-year  
6           average, or the most recent year would have resulted  
7           in a positive rather than a negative figure?

8           A.    Well, just to be clear, what I state on  
9           Lines 15 and 16 are my testimony.  That's not  
10          anything that I have any reason to believe that  
11          Mr. Griffin has a position on one way or the other.

12          Q.    Okay.

13          A.    And with regard to the statement at Lines 13  
14          through 14 or the clause in Lines 13 to 14, regarding  
15          the demonstrated tendency of the company to  
16          overestimate capital additions established by Staff,  
17          based on his review, Mr. Griffin determined that a  
18          six-year average was appropriate, and I accepted  
19          that.

20                Obviously, if something other than a  
21          six-year period were used, we would have a different  
22          result.

1           Q.    Do you know whether Mr. Griffin examined the  
2           causes of the variances in those years?

3           A.    I don't recall.  I believe he did some  
4           review of the causes, but that's a question that  
5           would be better directed to Mr. Griffin than to me.

6           Q.    Would you agree that if he did not perform  
7           any analysis of the causes of the variances, that his  
8           proposed adjustment is less probative?

9           A.    I wouldn't agree with that, no.

10          Q.    Do you have an opinion as to whether it  
11          would be a better methodology to perform the  
12          adjustment in the manner that he did with an  
13          examination of the underlying causes of variances or  
14          without?

15          A.    I don't suppose it would hurt to perform an  
16          examination of the underlying causes as you  
17          characterize it, but there obviously were reasons why  
18          the actual spending was less than the forecast.  And  
19          unless that difference was caused by something that  
20          was a real outlier, a one-time, nonrecurring abnormal  
21          event that was completely unlikely to occur again,  
22          I'm not really sure what additional value a detailed



1       analysis of the reasons for the difference between  
2       actual and budgeted spending would add.

3               That's one of the reasons you use an average  
4       going back five or six years; so the variances will  
5       even out over some reasonable period, and any unusual  
6       effects would tend to cancel each other out.

7           Q.   Did you read the rebuttal testimony of  
8       Mr. Gray?

9           A.   Yes, I did.

10          Q.   I guess I would know that by looking at the  
11       next line.

12               If I could direct your attention to Page 10  
13       of your rebuttal, Lines 16 through 20.

14          A.   Yes, I have that.

15          Q.   Do you see a reference to the company having  
16       reduced its proposed -- or excuse me, estimated  
17       resolution of the outcome of the 263 issue by  
18       approximately \$18 million?

19          A.   Yes.

20          Q.   Okay.  Would you agree, in fact, that that  
21       reduction was a correction?

22          A.   Yes, that's my understanding.  It was a

1 correction to the original adjustment the company  
2 proposed.

3 Q. I'd like to switch over to the  
4 uncollectibles percentage -- using that term  
5 loosely -- loss ratio.

6 Would you agree that the percentage figure  
7 that Nicor Gas was using in its accounting, not just  
8 in the case, but in its accounting at the end of  
9 December 2004 was 1.39 percent?

10 A. I believe that's what the company stated. I  
11 have no reason to dispute that.

12 Q. Okay. Similarly, would you agree that as of  
13 the end of March 2005, the company in its accounting,  
14 not just in the case, but in its accounting was using  
15 the figure of 1.42 percent?

16 A. Again, I have no reason to dispute that.

17 Q. Okay. Would you agree that the method that  
18 Nicor Gas uses to calculate that percentage is  
19 different than the method you employed in your  
20 Schedule C-2A?

21 A. It's somewhat different. It's similar but  
22 different.

1           Q.   Did you review the rebuttal testimony of  
2   Ms. Ebrey?

3           A.   Yes, I did.

4           Q.   Do you recall whether she withdrew a number  
5   of proposed adjustments to the company's revenue  
6   requirement?

7           A.   It's my recollection that she did, yes.

8           Q.   Do you have a recollection of whether some  
9   of those adjustments would increase the revenue  
10   requirement and some would decrease it?

11          A.   I recall that there were certainly some that  
12   would increase; that withdrawing that had the effect  
13   of increasing the revenue requirement. I don't  
14   recall, as I sit here, any that she withdrew that by  
15   doing so would decrease the revenue requirement, but  
16   it's possible.

17          Q.   If I could switch now to the topic of  
18   incentive compensation. Would you agree that a  
19   well-run business can include incentive compensation  
20   as part of its employees' compensation packages?

21          A.   Yes.

22          Q.   Now, let me give you a hypothetical

1 question, please. Let's assume the company were to  
2 hire ten accountants and it were -- and they were to  
3 be hired on an annual salary of \$50,000 a year. This  
4 is not going to be a math project, I hope not. And  
5 that that was a base pay amount that was consistent  
6 with the relevant labor market and at times being at  
7 the median of that market. Are you with me so far?

8 A. I think so.

9 Q. Okay. And let's assume -- I would hope you  
10 would assume the accountants are doing something  
11 useful in terms of enabling the company to perform  
12 back office work that enables it to provide tariff  
13 services.

14 A. Presumably, that's why they would be hired.

15 Q. Okay. Now, at this point in the  
16 hypothetical, just based on the facts you've heard so  
17 far, is there any fact which suggests to you that  
18 were the company to file a rate case, some of the  
19 costs of these employees' base pay should be  
20 disallowed?

21 A. Not that I've heard.

22 Q. Okay. Are you familiar with the term

1 "present value?"

2 A. Yes.

3 Q. Let's suppose that hypothetical is all same  
4 facts except 10 percent of the employees' expected  
5 compensation is incentive compensation.

6 MR. KAMINSKI: Clarification. Are you saying the  
7 expected compensation is still the \$50,000 you said  
8 before?

9 MR. RATNASWAMY: Yes.

10 BY MR. RATNASWAMY:

11 Q. If you wanted to determine whether those  
12 costs should or should not be recoverable in a rate  
13 case, would I be correct to assume that you would  
14 want to know -- I mean, you, Mr. Effron -- that you  
15 would want to know what are the triggers and key  
16 performance indicators of that incentive compensation  
17 claim?

18 A. Yes.

19 Q. In terms of financial triggers, would it  
20 make any difference to you whether -- I'm sorry. If  
21 I use the term "financial trigger" in this context,  
22 do you understand that term?

1           A.   Well, it's kind of a general term.  I would  
2   interpret that to mean triggers such as earnings per  
3   share or return on equity, something of that nature.

4           Q.   Okay.  Suppose that the financial triggers  
5   were set so low that it was simply the company had to  
6   earn net operating income of \$1, would you still  
7   question the recovery of those incentive compensation  
8   expenses?

9           A.   That's kind of a difficult hypothetical.  In  
10   that situation, first I'd probably have to  
11   investigate what the purpose would be establishing a  
12   compensation plan that was supposedly based on  
13   incentives if virtually nothing had to be done to  
14   trigger the incentives.  So without knowing all the  
15   particulars, it's kind of hard to respond to that in  
16   a definitive way.

17          Q.   Okay.  Would you agree that the outcome of  
18   the two different hypotheticals in terms of how much  
19   the employees get paid is identical?

20          A.   Is -- I'm sorry --

21          Q.   Is identical.  In one, they get \$50,000 base  
22   pay.  In the other, they get 45, plus essentially a

1       certain 5 on top of that?

2           A.    Assuming you were starting with a profitable  
3       company.  And to make it unprofitable would almost  
4       take some kind of affirmative effort.  In substance,  
5       the compensation would be the same.

6           Q.    Let's suppose that it's a little less  
7       fanciful, the trigger, and it's not \$1, but it's some  
8       higher amount that is still very close to being  
9       certain to achieve.  And let's suppose that the  
10      company offered you as the explanation for that  
11      trigger that it simply didn't want to have to pay the  
12      money in case some very unlikely adverse business  
13      results occurred.  Would the recovery of the  
14      incentive compensation in that hypothetical trouble  
15      you?

16          A.    Again, it's kind of hard to respond to all  
17      these hypotheticals just on the spot without having  
18      time to consider the pros and cons.  Again, it sounds  
19      like you have a situation where the so-called  
20      incentive utility was almost more of a formality than  
21      a substantive award for achieving certain goals.

22          Q.    Let's go back to the hypothetical.  The

1 employees are given the choice of \$50,000 in base pay  
2 or \$45,000 of base pay with an incentive compensation  
3 program that could pay as little as zero or as much  
4 as 10 with 5 being the most likely outcome, and the  
5 employees, because they're apparently not risk  
6 takers, all choose the incentive compensation  
7 approach.

8 Now, let's say that it ends up being 5 and  
9 along comes a rate case and the company proposes to  
10 recover what it actually paid those employees. Would  
11 any amount of the recovery of the incentive  
12 compensation trouble you?

13 A. It's possible. To the extent that that  
14 \$5,000 were rewarded for the purpose -- rewarded as a  
15 result of having achieved what the company determined  
16 to be a reasonable return on equity, for example,  
17 reasonable operating income, reasonable earnings per  
18 share, to me, in that situation, the shareholders  
19 should be the ones who are willing to reward the  
20 employees for having done so.

21 If the employees are working to achieve a  
22 goal that benefits the shareholders, then the



1       shareholders should be the one that rewards them for  
2       it.

3           Q.    Did you review the order in the company's  
4       last rate case on the subject of incentive  
5       compensation?

6           A.    Some time ago I did.

7           Q.    Okay.  How well do you recall it?

8           A.    So-so.

9           Q.    Okay.

10          A.    I generally recall it.

11          Q.    Do you recall that the incentive  
12       compensation program expenses were allowed in the  
13       revenue requirement?

14          A.    In that case, nine years ago, that's my  
15       recollection.  It's also my understanding that there  
16       have been several cases, other companies since then  
17       that have had different incentives.

18          Q.    Sure.  And did you testify in ICC docket  
19       01-0423 which is the Commonwealth Edison Company most  
20       recent delivery service rate case?

21          A.    Yes.

22          Q.    Would you agree that the Commission in that

1 case approved \$35 million of incentive compensation?

2 A. I would have to go back and review that.

3 That case had a fairly long history, as I recall.

4 Q. Do you recall -- and I'm not trying to test  
5 your recollection. But do you recall whether one of  
6 the reasons the incentive compensation program  
7 expenses was approved in the last case was because  
8 the Commission concluded that the company's employees  
9 had reduced -- had been more efficient in response to  
10 the program?

11 A. I think the Commission order would speak for  
12 itself on that. I don't think my characterizing of  
13 what the Commission said or didn't say in that  
14 regards as I sit here would really add anything.

15 Q. In terms of things that benefit the  
16 shareholders, does the fact that something might  
17 benefit the shareholders necessarily mean it doesn't  
18 benefit ratepayers?

19 A. Not necessarily. It can possibly mean that,  
20 but there are certain goals that would probably  
21 benefit shareholders and ratepayers.

22 Q. Would one obvious one be cost reduction?

1           A.    Yes.

2           Q.    In the scenario where the incentive  
3    compensation program key performance indicators are  
4    tied to cost reductions which would benefit both  
5    shareholders and ratepayers, do you have an opinion  
6    as to whether all, some, or none of the program costs  
7    should be allotted a revenue requirement?

8           A.    It generally has been my testimony that if  
9    it's a chief cost reduction -- and I should add,  
10   without compromising the quality of service at all,  
11   that it is not an unreasonable position to include  
12   that in the cost of service.

13          MR. RATNASWAMY:  I have no further questions.  
14   Thank you, Mr. Efron.

15          JUDGE BRODSKY:  The company asked you a question  
16   about if the workers had elected an incentive  
17   compensation program that had a variable payout as  
18   opposed to a fixed base rate salary, and had  
19   suggested that the middle outcome of the incentive  
20   compensation was the most likely to be recovered, and  
21   then the thrust of the question was what if the  
22   company then asked to recover that amount in a rate

1 case.

2 Similar hypothetical: Would your opinion  
3 change if the company proposed to recover the entire  
4 cost of the incentive compensation program and the  
5 payout remained uncertain?

6 THE WITNESS: Again, my recollection, based on the  
7 hypothetical as it was structured, the reward would  
8 be based on achieving some financial goal.

9 If the full amount of the potential award  
10 was achieved based on reaching some financial goal,  
11 then I would say it would be more questionable to  
12 include anything above the median because they're  
13 achieving a financial goal on behalf of the  
14 shareholders.

15 And if anybody is going to reward them for  
16 achieving the maximum financial goal, it should be  
17 the shareholders, not the customers.

18 JUDGE BRODSKY: Okay. Any follow-up on that?

19 MR. RATNASWAMY: I think just one question.

20

21

22

1                   FURTHER CROSS EXAMINATION

2                   BY

3                   MR. RATNASWAMY:

4           Q.    In terms of the word "financial goal" that  
5   you were just using, were you using that term in a  
6   way that would exclude cost reductions?

7           A.    I was using the word generally.  It wouldn't  
8   affirmatively exclude cost reductions, but it would  
9   be achievement of a financial goal regardless of  
10  whether there were cost reductions or not.

11           MR. RATNASWAMY:  No further questions.

12           JUDGE BRODSKY:  Redirect?

13           MR. KAMINSKI:  Can we have a moment, please.

14           JUDGE BRODSKY:  Sure.

15                   (Discussion off the record.)

16           MR. KAMINSKI:  Just one line.

17                   REDIRECT EXAMINATION

18                   BY

19                   MR. KAMINSKI:

20           Q.    Mr. Efron, do you recall being questioned  
21  by Mr. Ratnaswamy about whether you supported the  
22  testimony of witnesses Mierzwa and Thomas regarding

1       those issues that were used in your final number for  
2       the testimony?

3           A.    Yes, I recall that.

4           Q.    And in your answer to that, was your  
5       intention to indicate that you had no opinion  
6       regarding that testimony?

7           A.    My intention was to indicate that I wasn't  
8       offering any independent support of that testimony.  
9       I didn't mean to imply that I wasn't supporting that  
10      testimony in the sense that I might have some  
11      questions about it.  It was that I wasn't offering an  
12      opinion on it or offering any independent support as  
13      to revenue requirements of that testimony.

14          MR. KAMINSKI:  Thank you.  That's all I have.

15          JUDGE BRODSKY:  Anything further?

16          MR. RATNASWAMY:  Unfortunately, I have some  
17      recross.  I'd like to mark this as Exhibit Number --  
18      I believe it's 54.  May I approach the witness?  Oh,  
19      I'm sorry, 55.  I apologize.

20          MR. KAMINSKI:  I believe this is already in the  
21      record as an attachment to the testimony.

22          MR. RATNASWAMY:  As an attachment?

1 MR. KAMINSKI: I believe so.

2 MR. RATNASWAMY: Mr. Efron's own testimony or  
3 someone else's?

4 MR. KAMINSKI: No, to one of the Nicor witnesses.

5 MR. RATNASWAMY: Oh, even better.

6 MR. KAMINSKI: Part of Exhibit 26B.3.

7 MR. RATNASWAMY: Thank you, Mr. Kaminski. Calm.

8 MR. KAMINSKI: Or .4, I believe.

9 MR. RATNASWAMY: Thank you.

10 RECROSS EXAMINATION

11 BY

12 MR. RATNASWAMY:

13 Q. Mr. Efron, is anything you said on redirect  
14 intended to now indicate that your testimony should  
15 be understood to support that of Mr. Mierzwa?

16 A. No, no, not at all. I thought -- I intended  
17 to say exactly what's in this response here; that I  
18 am not providing any independent support, but that --  
19 I just didn't want anybody to infer from that that --  
20 that that meant I was not supporting it in the sense  
21 that I had some questions or some opposition to it.  
22 That's all I was trying to clarify.

1 JUDGE ARIDAS: Is it fair to say you're neutral  
2 for his testimony?

3 THE WITNESS: It's very fair to say that.

4 BY MR. RATNASWAMY:

5 Q. Okay. And the same as to Mr. Thomas?

6 THE WITNESS: Yes.

7 MR. RATNASWAMY: Thank you. No further  
8 questions.

9 MR. KAMINSKI: Nothing more for us, Judge.

10 JUDGE BRODSKY: Thank you, Mr. Effron. We'll  
11 take a 15-minute break.

12 (Recess taken.)

13 JUDGE BRODSKY: Back on the record.

14 Call your next witness.

15 MR. FEIN: Yes, your Honor.

16 JUDGE BRODSKY: Was there a problem?

17 MR. ZIBART: I was going to introduce myself.

18 Christopher Zibart of Foley & Lardner representing  
19 Northern Illinois Gas Company. Thank you.

20 MR. FEIN: Constellation NewEnergy Gas Division,  
21 LLC, calls its next witness or first witness,  
22 Mr. John M. Oroni.



1 (Witness sworn.)

2 JOHN M. ORONI,

3 called as a witness herein, having been first duly  
4 sworn, was examined and testified as follows:

5 DIRECT EXAMINATION

6 BY

7 MR. FEIN:

8 Q. Mr. Oroni, could you please state your name  
9 and spell your last name for the court reporter,  
10 please.

11 A. John M. Oroni, O-r-o-n-i.

12 Q. And, Mr. Oroni, do you have before you a  
13 document that's been labeled CNE Gas Exhibit 1.0 that  
14 is entitled the Direct Testimony of John M. Oroni?

15 A. Yes, I do.

16 Q. And that document contains questions and  
17 answers, 14 pages of questions and answers as well as  
18 exhibits, four attached exhibits; is that correct?

19 A. That's correct.

20 Q. And was this document prepared by you or  
21 under your direction and control?

22 A. Yes, it was.

1           Q.    Do you have any additions, corrections, or  
2           changes to make to CNE Gas Exhibit 1.0?

3           A.    No, I do not.

4           Q.    And if I asked you these questions that were  
5           contained in your prefiled direct testimony, would  
6           your answers be the same today?

7           A.    Yes, they would.

8           Q.    Is the information contained in here true  
9           and correct to the best of your knowledge and belief?

10          A.    Yes.

11          Q.    Do you also have before you a document  
12          entitled CNE Gas Exhibit 2.0 entitled the Rebuttal  
13          Testimony of John M. Oroni?

14          A.    Yes, I do.

15          Q.    And was this document prepared by you or  
16          under your direction and control?

17          A.    Yes, it was.

18          Q.    And this document has 34 pages in questions  
19          and answer format, as well as supporting attachments,  
20          Exhibits 2.1, 3.6; is that correct?

21          A.    That's correct.

22          Q.    Do you have any changes, corrections, or

1 additions to make to your prefiled rebuttal testimony  
2 in this proceeding?

3 A. No, I do not.

4 Q. If I asked you the questions contained in  
5 CNE Gas Exhibit 2.0 today, would your answers be the  
6 same as they were in the prefiled testimony?

7 A. Yes.

8 Q. Is the information contained herein true and  
9 correct to the best of your knowledge and information  
10 and belief?

11 A. Yes.

12 MR. FEIN: With that, subject to cross  
13 examination, Constellation NewEnergy Gas would move  
14 for the admission of CNE Gas Exhibit 1.0 and  
15 Exhibit 2.0 and tender the witness for cross  
16 examination.

17 JUDGE BRODSKY: Any objection?

18 MR. ZIBART: No objection, your Honor.

19 JUDGE BRODSKY: Those are admitted subject to  
20 cross.

21

22

1 (Whereupon, CNE Gas  
2 Exhibit Nos. 1.0 and 2.0 were  
3 admitted into evidence  
4 as of this date.)

5 JUDGE BRODSKY: And you may proceed.

6 MR. ZIBART: I believe I'm the only one with  
7 cross examination.

8 CROSS EXAMINATION

9 BY

10 MR. ZIBART:

11 Q. Good morning, Mr. Oroni.

12 A. Good morning.

13 Q. You described in your testimony that you  
14 performed a bill comparison in some of the CNE Gas'  
15 customers to see what the increase in rates might be.  
16 Do you remember that?

17 A. Yes.

18 Q. You didn't do a comparison for every CNE Gas  
19 customer, did you?

20 A. No.

21 Q. And you're not a statistician, are you?

22 A. No. Engineer by education.

1           Q.    So you didn't do like a statistically random  
2   sample or anything like that?

3           A.    No.   We did an analysis that tried to  
4   envelope our customers.

5           Q.    Okay.   So the 30 percent increase that you  
6   found is for the CNE Gas customers that you chose to  
7   compare?

8           A.    That's correct.

9           Q.    You also mention in your testimony -- you  
10   talk about Rate 81 and the cancellation of that.   Do  
11   you remember that?

12          A.    Yes.

13          Q.    And you mentioned that Rate 81 was a  
14   promotional rate to encourage the use of natural gas  
15   for on-site electric generation?

16          A.    That's correct.

17          Q.    Do you know whether that promotional rate  
18   was set below the company's cost of service?

19          A.    I do not.

20          Q.    How many customers does CNE Gas serve that  
21   takes service under Rate 81?

22          A.    I don't know the exact number offhand.   And

1 we'd also consider that information proprietary and  
2 confidential to the company.

3 Q. You said in your testimony that the  
4 customers who take service under Rate 81 needed to  
5 invest in certain equipment. Do you remember that?

6 A. Yes.

7 Q. And you have no evidence of how much money  
8 any particular customer has spent; is that fair?

9 A. No, not specifically.

10 Q. You offered the opinion in your testimony  
11 that Nicor Gas' proposed rates would place the State  
12 of Illinois at a competitive disadvantage with other  
13 locations; right?

14 A. Yes, I believe so.

15 Q. And do you recall being asked in a data  
16 request to provide your study or analysis that backed  
17 up that statement; do you recall that?

18 A. Yes.

19 Q. And, in fact, you prepared no study or  
20 analysis of gas prices in various states that support  
21 that statement; isn't that true?

22 A. That's correct.

1           Q.   In fact, you'd agree, wouldn't you, that a  
2   customer's decision to locate its business -- or to  
3   relocate its business would depend on a number of  
4   factors, not just the price of energy; right?

5           A.   That's correct.   Energy would be one of the  
6   factors.

7           Q.   And so would the employment pool, labor  
8   costs, land or lease costs, taxes, transportation  
9   access, availability of raw materials, those would  
10   all be in there; right?

11          A.   Correct.

12          Q.   Now, over the course of your experience with  
13   different LDCs -- and you understand by that I mean  
14   local distribution companies?

15          A.   Yes.

16          Q.   You've had the opportunity to compare or  
17   evaluate what's good or not so good in various  
18   companies' tariffs?

19          A.   Primarily within the State of Illinois,  
20   correct.

21          Q.   And when the Illinois Commerce Commission is  
22   evaluating Nicor Gas' tariffs and charges, you're of

1 the opinion, are you not, that the Commission should  
2 look at the whole tariff, all of its provisions to  
3 see if it's reasonable?

4 A. Yes.

5 Q. And if you want to compare the tariff of one  
6 utility to the tariff of another utility, again,  
7 you'd want to compare all provisions, wouldn't you?

8 A. Yes.

9 Q. Some might be more favorable in one area and  
10 others might not; is that fair?

11 A. That's potentially correct, yes.

12 Q. Now, you made a couple of specific  
13 suggestions for changes in Nicor Gas' tariffs,  
14 haven't you?

15 A. Yes.

16 Q. You would like to see Nicor Gas accept  
17 intraday nominations; right?

18 A. That's correct.

19 Q. And you would like to see Nicor Gas  
20 eliminate the 50 customer limit on groups; is that  
21 right?

22 A. That's correct.



1           Q.   Both of those tariff changes would, in your  
2 view, be more advantageous to suppliers like CNE Gas?

3           A.   And to customers.

4           Q.   Now, in your testimony -- and this is on  
5 Pages 14 and 15 of your rebuttal testimony -- you  
6 provided a list of utilities that allow intraday  
7 nominations presently. Do you remember that? Do you  
8 have that before you?

9           A.   Yes, I do.

10          Q.   And your list doesn't say what the other  
11 provisions of their tariffs are, does it?

12          A.   No, it does not.

13          Q.   You're just focusing on that one issue on  
14 Pages 14 and 15?

15          A.   That's correct.

16          Q.   And so one wouldn't know just reading your  
17 list whether one of these utilities you've listed  
18 here offers intraday nominations because it requires  
19 suppliers to match deliveries to the customer's use  
20 on a daily basis?

21          A.   No.

22          Q.   But if you wanted to look -- if you wanted

1 to know that, you'd have to look at the company's  
2 tariff, wouldn't you?

3 A. That's correct.

4 Q. And, in fact, isn't that exactly the case  
5 with Baltimore Gas & Electric, that they offered  
6 intraday nominations because they require suppliers  
7 to match deliveries to the customer's use on a daily  
8 basis?

9 A. That I do not know.

10 Q. But if I wanted to know it, I would look at  
11 the tariff, wouldn't I?

12 A. That's correct.

13 MR. ZIBART: Your Honor, I believe our next  
14 number is Nicor Gas No. 56.

15 (Whereupon, Nicor Gas  
16 Exhibit No. 56 was  
17 marked for identification  
18 as of this date.)

19 BY MR. ZIBART:

20 Q. Mr. Oroni, you have in front of you what has  
21 been marked for identification as Nicor Gas  
22 Exhibit 56?

1           A.    Yes, I do.

2           Q.    And what is that document?

3           A.    This appears to be, just looking at it  
4           briefly, a tariff from Baltimore Gas & Electric  
5           Company for delivery of service gas suppliers  
6           Schedule DSG.

7           Q.    And can you turn to the fourth page of that,  
8           which is -- I guess it's actually labeled Page 72.  
9           Do you have that in front of you?

10          A.    Yes, I do.

11          Q.    Okay.  And in the middle of that page under  
12          the heading Determination of the Daily Requirement,  
13          this tariff says, For customers served under  
14          Schedules D and C, supplier's daily requirement shall  
15          be determined each day by the company based on the  
16          customer's connected load and expected use of  
17          equipment.  Do you see that?

18          A.    Yes.

19          Q.    And Baltimore Gas & Electric is one of the  
20          ones on your list for accepting intraday nominations;  
21          is that right?

22          A.    One of many, correct.

1           Q.    Let's take a look at your list of utilities  
2           that don't limit the size of groups.  And I think  
3           that's on Page 20 of your rebuttal testimony.

4           A.    Okay.

5           Q.    And I see on your list SemCo.  Do you see  
6           that one there?  That's S-e-m-C-o.

7           A.    SemCo?

8           Q.    Yeah.

9           A.    Correct.

10          Q.    And do you know how many customers they have  
11          in their customer choice program?

12          A.    No, I do not.

13          Q.    Were you surprised to learn that it's only  
14          200 customers total?

15          A.    Honestly, no.

16          Q.    Okay.  And what about Levo Gas & Electric,  
17          do you know how many customers they have in their  
18          program?

19          A.    No.

20          Q.    Would you be surprised to learn that it's  
21          only 120?

22          A.    No.

1           Q.   And do you know how many customers Nicor Gas  
2   has in the customer select program?

3           A.   No.   We don't participate in the customer  
4   select program.

5           Q.   Mr. Oroni, I'd like to ask you a  
6   hypothetical question.   Would you assume that  
7   eliminating the 50 customer limit on groups would  
8   increase Nicor Gas' cost of service.   Do you have  
9   that in mind?

10          A.   Can you repeat that again?

11          Q.   I want you to assume that eliminating the 50  
12   customer limit on groups would increase Nicor Gas'  
13   cost of service.

14          A.   Okay.

15          Q.   Okay.   Given that hypothetical, how should  
16   Nicor Gas recover those increased costs if the 50  
17   customer limit is eliminated as proposed?

18          A.   I guess without seeing specifics, it would  
19   probably come via charges to transporters.

20          Q.   Now, Mr. Oroni, at the present time, CNE Gas  
21   does not lease any storage capacity from Nicor; isn't  
22   that true?

1           A.    That's correct.

2           Q.    And at the present time, CNE has no plan to  
3 begin leasing storage capacity from Nicor; is that  
4 correct?

5           MR. FEIN:  I would object to the question.  The  
6 question calls for obviously competitively sensitive  
7 information.

8           JUDGE ARIDAS:  Sustained.

9           BY MR. ZIBART:

10          Q.    CNE Gas does not have any arrangements for  
11 current storage capacity with any interstate  
12 pipelines; is that correct?

13          MR. FEIN:  Same objection, your Honor.

14          JUDGE ARIDAS:  Sustained.

15          BY MR. ZIBART:

16          Q.    And am I correct that CNE Gas has purchased  
17 no peaking service over the last five years?

18          MR. FEIN:  Same objection.

19          JUDGE ARIDAS:  Sustained.

20          MR. ZIBART:  Well, your Honor, I'm not sure  
21 whether I understand why any of these are  
22 competitively sensitive.  I mean, we're talking about

1       being -- talking about very general sort of yes or no  
2       whether they do it in total, but I suppose we could  
3       offer to do it in camera.

4               MR. FEIN:   That would be fine.   If the company  
5       wants to go in camera, that's fine.   I think it  
6       speaks for itself that this is seeking competitively  
7       sensitive business information.   And I still don't  
8       know the relevance of it either.   It hasn't been tied  
9       to anything.

10              JUDGE ARIDAS:   Do you have a long line of  
11       questioning?

12              MR. ZIBART:   No.   In fact, those are it.   Those  
13       are it.   I've now completed it.   So those are the  
14       questions.

15              JUDGE ARIDAS:   All right.   We'll go in camera.  
16       Do you have -- you have much more cross, right?

17              MR. ZIBART:   No.   I think that's going to be the  
18       end of my cross.

19              JUDGE ARIDAS:   Okay.   Let's do that now then.

20              JUDGE BRODSKY:   So, once again, anybody who is  
21       not a signatory to the proprietary information,  
22       please, exit the room.

1 JUDGE ARIDAS: That appears to be everybody.

2 (Discussion off the record.)

3 JUDGE ARIDAS: Let's proceed in camera with the  
4 same questions.

5 (Whereupon, the following  
6 proceedings were had in camera.)

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